

OGC 82-00723
26 January 1982

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MEMORANDUM FOR: [] Office of Security
PMCD
FROM : []
Office of General Counsel
SUBJECT : Secretarial Pay Rates

1. This memorandum is in response to your inquiry concerning whether the Office of Personnel was correct in its recommendation concerning the salary level of certain employees, and whether there is any special authority under which the affected employees can retain the initially approved GS grade/step and 4.8% pay increase. It is our opinion that the Office of Personnel was following correct Agency policy in its recommendation concerning the salary level of the affected employees, although there is no law or regulation applicable to the Agency that would require such results. It is also our opinion that the DCI would have authority to allow the affected employees to retain the 4.8% increase in pay, but this could not be done retroactively.

2. As we understand the facts, the employees in question were converted from a special occupational pay category to the GS schedule on the same day that a legislative pay increase for employees paid under the GS schedule became effective. There are two ways this change could be processed: (a) the employees could be converted to an equivalent level within the GS schedule and then they would receive the 4.8% pay increase; or (b) the employees could be converted to the GS schedule after the schedule had been adjusted to take into account the pay increase. The affected employees would receive less money under alternative (b) than under alternative (a). The change was initially processed pursuant to alternative (a), but this decision was reversed by the Office of Personnel, who favored alternative (b).

3. Although there is no particular law or regulation that would require the Agency to process the conversion in a particular manner, the Office of Personnel's recommendations were consistent with government policy. An OPM regulation does exist that would require a department to convert employees, who are paid under the statutory pay system, from a special pay rate scale to an equivalent level within the GS schedule after the GS schedule had been adjusted to take into account a legislative pay increase. 5 C.F.R. 530 §307(b)(2). This regulation does not apply to the Agency since Agency employees are not paid under the

statutory pay system as defined by 5 U.S.C. §5301(c).*/ However, it is the policy of the Agency to follow rules and regulations on pay and position classification for Federal employees paid under the statutory pay system. See [redacted] The Office of Personnel was thus following standard Agency policy when it recommended that the Agency follow the OPM regulation governing conversion.

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5. The recommendation by the Office of Personnel that the Agency follow OPM regulations governing pay conversions could be reversed by the DCI. The DCI has authority to set rates of pay. [redacted] He is also not legally required to follow rules regarding the federal pay structure, which the Agency has been exempted from. The DCI could order that the employees in question be paid the amount of money that they would have received had they been converted to the GS schedule before the legislative pay increase went into effect. This increase could not be made retroactive since retroactive pay can only be given for unwarranted personnel action, and the Office of Personnel's recommendations concerning the affected employees were not unwarranted since the Agency was following standard policy.

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*/ Another regulation requires that when an employee is entitled to two pay benefits at the same time, the agency shall process the changes in the order which gives the employee the maximum benefit. 5 C.F.R. §531.204. If this rule were applicable to the Agency employees in question, then the changes would be processed in accordance with alternative (a) because this would give the employees the maximum benefit. However, this rule is not applicable to the affected Agency employees for two reasons: (1) the simultaneous pay action rule is not legally applicable to the Agency; and (2) the Comptroller General has ruled that the simultaneous pay action rule does not apply to Federal employees who are converted to the GS schedule on the same day that employees paid under the GS schedule get a pay raise. B-156058, 52 Comp. Gen. 671 (1973).

Date

ROUTING AND TRANSMITTAL SLIP

29 Jan

TO: (Name, office symbol, room number,
building, Agency/Post)

Initials

Date

1.

Darb

J

1/29

2.

George

MM

1/29

3.

Gretchen

4.

Hi

5.

PSS/File spec Pay Rate Schedule

Action	File	Note and Return
Approval	For Clearance	Per Conversation
As Requested	For Correction	Prepare Reply
Circulate	<input checked="" type="checkbox"/> For Your Information	See Me
Comment	Investigate	Signature
Coordination	Justify	

REMARKS

This does not affect our recent
action to reestablish the spec pay
rate schedule for ^{clerical} GS-5s in
and GS-6s in and was
rendered in response to Security's
question - not OP!
1-29-82

DO NOT use this form as a RECORD of approvals, concurrences, disposals,
clearances, and similar actions

FROM: (Name, org. symbol, Agency/Post)

Room No.—Bldg.

Phone No.

ROUTING AND RECORD SHEET

SUBJECT: (Optional)

Secretarial Pay Rates

FROM:

Office of General Counsel
7C35 Headquarters

EXTENSION

NO.

OGC 82-00723

DATE

26 January 1982

TO: (Officer designation, room number, and building)

DATE

OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

RECEIVED

FORWARDED

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1016 Ames Bldg.

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